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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/505,281

01/14/2005

Dolly Nicholas

4297-3

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01/30/2008

NIXON & VANDERHYE, PC

901 NORTH GLEBE ROAD, 11TH FLOOR

ARLINGTON, VA 22203

EXAMINER

HRUSKOCI, PETER A

ART UNIT

PAPER NUMBER

1797

MAIL DATE

DELIVERY MODE

01/30/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/505,281

Applicant(s)

NICHOLAS, DOLLY

Examiner

Peter A. Hruskoci

Art Unit

1797

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 12/27/07.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,2,5-10,12-16 and 18-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 5-10, 12-16, and 18-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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The amendment filed 12/27/07 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: "calcium hypochlorite", "sulfuric acid", "Chlorine", and "d-limonene" are drawn to subject matter having no clean antecedent basis in the specification as originally filed.

Applicant is required to cancel the new matter in the reply to this Office Action.

Claims 1, 2, 5-10, 12-16, and 18-20 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claims contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventors, at the time the application was filed, had possession of the claimed invention. In claim 1 "wherein the solid phase is free of oil" and 15 "wherein the removed solids are free of oil" lack clear antecedent basis in the specification as originally filed, and appears to be drawn to new matter.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 5-10, 12-16, and 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vitalis et al. 3,756,959 in view of Fullinwider et al. 4,014,801. Vitalis et al. disclose (see col. 3 line 44 through col. 7 line 65, and Example 1) a method for treating an emulsion or effluent containing suspended solids and soluble salts substantially as claimed. It is

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submitted that the solids containing minor quantities of mineral oil components, or the flocculated fines containing some oil, are considered patentably indistinguishable from solid phase and removed solids recited in the instant claims. The claims differ from Vitalis et al. by reciting the injection of an oxidizing or reducing agent into the emulsion or effluent. Fullinwider et al. disclose (see col. 1 line 65 through col. 3 line 56) that it is known in the art to add oxidizing or reducing agents to aid in separating aqueous and hydrocarbon phases in an emulsion including oil, polyacrylamide, and demulsifying agent. It is submitted that the temperature and agents utilized in the combination of Vitalis et al. and Fullinwider et al. would appear to cause reduced interfacial tension, chained scission and change in molecular weight of the oil molecules, enhance viscosity of a saleable product, and a reduction in BOD and COD of the aqueous phase as in the instant method. It would have been obvious to one skilled in the art to modify the method of Vitalis et al. by injecting the recited oxidizing or reducing agent in view of the teachings of Fullinwider et al., to aid in separating an aqueous phase or a clean effluent. With regard to claims 5 and 8, it is submitted that the surfactants utilized in Vitalis et al. appear to include the recited solubilizer, and hydrophobic and hydrophilic chemicals. The specific testing utilized, addition of the oxidizing/reducing agent to the aqueous phase to further form a clean effluent, and the specific clean effluent or water produced, would have been an obvious matter of process optimization to one skilled in the art, depending on the specific emulsion or effluent treated and results desired, absent a sufficient showing of unexpected results.

Applicant argues that the amendment to page 2 of the specification are based on information provided in the material data sheets presented 12/27/07. It is submitted that the

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material data sheets have been carefully considered but appears to lack support for the terms "calcium hypochlorite", "sulfuric acid", "Chlorine", and "d-limonene".

Applicant alleges that the combination of Vitalis et al. and Fullinwider et al. does not teach or suggest that the solid phase is free of oil. It is submitted that the instant specification fails to provide clear antecedent basis for this solid phase as noted above. It is further submitted that the solid phase outputted in Vitalis et al. contains only some or minor amounts of oil, which considered patentably indistinguishable from the above solid phase. It is noted that the separated solid phase of Vitalis et al. can be recycled to the environment by dumping into a suitable lagoon, dump area, or underground mineral formation. Furthermore, applicant has not supplied sufficient comparative evidence with Vitalis et al. and Fullinwider et al., to support the above argument.


The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peter A. Hruskoci whose telephone number is (571) 272-1160. The examiner can normally be reached on Monday through Friday from 8:00AM-5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Duane Smith can be reached on (571) 272-1166. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Peter A. Hruskoci  
Primary Examiner  
Art Unit 1797

1/26/08